

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

**KENNETH BERRY,**

Petitioner,

v.

**JEFF PREMO,**

Respondent.

**MOSMAN, J.,**

No. 6:15-cv-00559-PK

OPINION AND ORDER

On July 12, 2016, Magistrate Judge Papak issued his Findings and Recommendation [21], recommending Petitioner's Petition for Writ of Habeas Corpus [1] should be DENIED with prejudice. Judge Papak recommended I issue a certificate of appealability. Petitioner objected [23] and Respondent responded [24].

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of

the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Papak's recommendation and I ADOPT the F&R [21] as my own opinion.

IT IS SO ORDERED.

DATED this 4th day of August, 2016.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
Chief United States District Judge